IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2456 OF 1998

Municipal Corporation of
the City of Pune .. Petitioners.
Vs.
Shaikh Mohammed Salim
Abdul Waheed .. Respondent.

Mr.R.M.Pethe i/b Mr.R.G.Ketkar for the petitioners.
None present for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 31ST AUGUST, 2005

P.C.:

. This petition is arising from the order dated 2.5.1998 passed by the IInd Additional District Judge, Pune in Civil Miscellaneous Application No.230 of 1998 by which the application filed by the petitioners-corporation has been rejected. The said application was filed for stay to the execution of the judgment and decree dated 30.8.1997 passed in Regular Civil Suit No.660 of 1996 pending hearing and final disposal of the civil appeal. The respondent-plaintiff had filed suit for mandatory injunction. The operative part of the judgment and order dated 30.8.1997 reads thus:

"1. The suit is decreed.
2. It is directed to defendant to

return the stall to plaintiff, which was seized on 2.2.1991, failing which Rs.5,000/- with interest of Rs.6% per annum be given to plaintiff, to erect a new stall.

3. It is directed to the defendant to give alternate premises to the plaintiff under the tree, where other stalls are accomodated".

2. Being aggrieved and dis-satisfied with the said judgment, the petitioner-corporation filed Civil Appeal and in that appeal the corporation also filed Civil Miscellaneous Application No.230 of 1998 seeking stay of the execution of the decree dated 30.8.1997. That application was rejected hence this petition. In this petition while issuing Rule on 13th July, 1998 the following order was passed:

"Rule.

Father of the Respondent was having one small stall near the road. There were other 8 such stalls. They were on the Corporation land. The premises were required for road widening. Hence notices of demolition were given. Those 9 stall holders filed a suit praying for injunction against the Corporation for demolishing those stalls. The suit was dismissed for default. The son of one of the original stall holders has filed the suit praying for getting back the stall which was removed by the Petitioner.

In reply it was pointed out by the Petitioner that 5 stall holders only were granted handcart card licence near the Police chowky of the said road. The 4 holders, which is included the father of the Respondent, was offered alternate premises at different place, but they have refused. It is also pointed out that there

> is heavy traffic on the road which is near Pune Railway Station. Even the said road is made one way traffic by the Police Department. It was also contended that the suit was not maintainable at the instance of the respondent and as the earlier suit by his father was dismissed. The suit filed by the Respondent came to be decreed by the learned Civil Judge, Junior Division, by order dated 30.8.1997.
>
> The Petitioner filed appeal. There was delay. Hence the Petitioner filed application for condonation of delay and also praying for stay of the decree passed by the trial Court by which the Respondent is permitted to have the stall at its original place.
>
> The learned Second Additional District Judge, Pune by its order dated 2.5.1998 dismissed the said application for interim stay. He has reasoned that 5 stall holders were given alternate accommodation under the tree in front of police chowky (at the original place). The said reasoning is obviously wrong, since only permission was granted to 5 licence holders to have handcarts and not the stalls. Further he has failed to consider whether the suit filed by the Respondent was maintainable or not in view of the fact that the earlier suit filed by his father was dismissed for default. In addition he has not properly applied his mind to the fact that what is going to be the effect if such a permission is granted to one stall holder. Then certainly others will come forward and claim and ultimately the whole object of road widening will be frustrated.
>
> In view of this, interim order in terms of prayers (c)."

3. In view of the aforesaid order passed by this court on 13.7.1998 and considering the overall facts and circumstances of the case, in my opinion, there is no point in keeping this petition pending any more and it can be disposed of by the following order:

1. Interim order passed by this court on 13.7.1998 shall remain operative till the disposal of the Civil Appeal, if not disposed of already, filed by the petitioner-corporation arising from the judgment and order dated 30.8.1997 in Regular Civil Suit No.660 of 1996.

2. The Appellate Court shall endeavour to dispose of the said appeal, if not disposed of already, as expeditiously as possible and preferrably within a period of six months from the date of receipt of this order. Needless to express that the Appellate Court shall decide the appeal on merits in accordance with law. Rule is, accordingly, disposed of.

(D.B.Bhosale, J.)